

PROPOSED PARAMETERS AND GUIDELINES

Government Code Section 11135

Statutes 1992, Chapter 913; Statutes 1994, Chapter 146; and Statutes 2001, Chapter 708

Discrimination Complaint Procedures ***(Federal Rights for Individuals with Disabilities for Employment – Set One)***

02-TC-46

(and a portion of 02-TC-25 and 02-TC-31)

(Fiscal Year 2001-2002 only)

I. SUMMARY OF THE MANDATE

On March 24, 2011, the Commission on State Mandates (Commission) adopted a statement of decision for the *Discrimination Complaint Procedures* test claim finding that the test claim statutes impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Commission has adopted separate sets of parameters and guidelines for the *Discrimination Complaint Procedures* (02-TC-46) program as follows: (1) equal employment opportunity program; (2) federal rights for individuals with disabilities; and (3) discrimination complaint procedures. This set of parameters and guidelines addresses the Commission's findings with respect to the costs incurred to comply with federal rights for individuals with disabilities for employment in fiscal year 2001-2002.

Because some of the activities approved in the statement of decision are not reimbursable beyond the 2001-2002 fiscal year, and the period of reimbursement for some of the activities begins during the 2002-2003 fiscal year, the Commission has adopted two sets of parameters and guidelines for the federal rights for individuals with disabilities activities: (1) for costs incurred during the 2001-2002 fiscal year only; and (2) for costs incurred in fiscal year 2002-2003 and in subsequent fiscal years.

The Commission found that section 11135(b) requires community college districts to:

Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts. (Gov. Code, § 11135(b) (Statutes 2001, ch. 708).)

This activity is limited to community college districts that have not engaged in the self-evaluation prior to the 2001-2002 fiscal year for the following one-time activities:

1. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that

modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)

2. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

II. ELIGIBLE CLAIMANTS

Any community college district, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimants filed the test claim in the 2002-2003 fiscal year, establishing eligibility for reimbursement on or after July 1, 2001. Two sets of parameters and guidelines have been adopted, one for costs incurred *only* during the 2001-2002 fiscal year, and one for costs incurred in or after the 2002-2003 fiscal year. These parameters and guidelines are for the 2001-2002 fiscal year only. Therefore, costs incurred pursuant to Government Code section 11135(b) as set forth in these parameters and guidelines are reimbursable only for the period of July 1, 2001 through June 30, 2002.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A

source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activity is reimbursable:

Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts. (Gov. Code, § 11135(b) (Statutes 2001, ch. 708).)

This activity is limited to community college districts that have not engaged in the self-evaluation prior to the 2001-2002 fiscal year for the following one-time activities:

1. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)
2. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.